

**PART II – CONTRACT CLAUSES**

**SECTION I – CONTRACT CLAUSES**

**Section I – Contract Clauses**

I-1

As of Amendment 7

## PART II – CONTRACT CLAUSES

### SECTION I – CONTRACT CLAUSES

#### **I.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2) (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://www.arnet.gov/far/>

#### **FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)**

NUMBER	TITLE	DATE
52.202-1	DEFINITIONS	JUL 2004
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	SEP 2006
52.203-7	ANTI-KICKBACK PROCEDURES	JUL 1995
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2005
52.204-4	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER	AUG 2000
52.204-7	CENTRAL CONTRACTOR REGISTRATION	JUL 2006
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	SEP 2007
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	SEP 2006
52.211-5	MATERIAL REQUIREMENTS	AUG 2000
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	SEP 1990
52.215-2	AUDIT AND RECORDS – NEGOTIATION	JUN 1999
52.215-8	ORDER OF PRECEDENCE – UNIFORM CONTRACT	OCT 1997

#### **Section I – Contract Clauses**

<b>NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
	FORMAT	
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS	OCT 1997
52.215-13	SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS	OCT 1997
52.215-14	INTEGRITY OF UNIT PRICES	OCT 1997
52.216-7	ALLOWABLE COST AND PAYMENT First Fill-in: "30th"	DEC 2002
52.216-8	FIXED FEE	MAR 1997
52.217-8	OPTION TO EXTEND SERVICES	NOV 1999
52.217-9	OPTION TO EXTEND THE TERM OF THE CONTRACT	MAR 2000
52.219.4	NOTICE OF PRICE EVALUATION FOR HUBZONE SMALL BUSINESS CONCERNS	JUL 2005
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	MAY 2004
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN	NOV 2007
52.219-16	LIQUIDATED DAMAGES – SUBCONTRACTING PLAN	JAN 1999
52.219-23	NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS First Fill-in: "10"	SEP 2005
52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES	FEB 1997
52.222-6	DAVIS-BACON ACT	JUL 2005
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS	FEB 1988
52.222-19	CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES	JAN 2006
52.222-20	WALSH-HEALEY PUBLIC CONTRACTS ACT	DEC 1996
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION	FEB 1999
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	SEP 2006
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	JUN 1998
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	SEP 2006

**Section I – Contract Clauses**

I-3

As of Amendment 7

<b>NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
52.222-41	SERVICE CONTRACT ACT OF 1965 AS AMENDED	JUL 2005
52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA,  Alternate I (July 1995)	JAN 1997
52.223-5	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION	AUG 2003
52.223-6	DRUG FREE WORKPLACE	MAY 2001
52.223-11	OZONE-DEPLETING SUBSTANCES	MAY 2001
52.223-14	TOXIC CHEMICAL RELEASE REPORTING	AUG 2003
52.224-1	PRIVACY ACT NOTIFICATION	APR 1984
52.224-2	PRIVACY ACT	APR 1984
52.225-1	BUY AMERICAN ACT – SUPPLIES (Note: Applicability, if any, limited by 14 USC 665.)	JUN 2003
52.225-11	BUY AMERICAN ACT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS	NOV 2006
52.225-13	RESTRICTION ON CERTAIN FOREIGN PURCHASES	FEB 2006
52.227-1	AUTHORIZATION AND CONSENT	DEC 2007
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEC 2007
52.227-3	PATENT INDEMNITY  ALTERNATE II (APR 1984)  Fill-in: The NAIS System	APR 1984
52.227-13	PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT	JAN 1997
52.227-14	RIGHTS IN DATA - GENERAL  ALTERNATE II (DEC 2007)	DEC 2007
52.227-16	ADDITIONAL DATA REQUIREMENTS	DEC 2007
52.227-17	RIGHTS IN DATA-SPECIAL WORKS	DEC 2007
52.227-18	RIGHTS IN DATA-EXISTING WORKS	DEC 2007
52.227-19	COMMERCIAL COMPUTER SOFTWARE LICENSE	DEC 2007
52.227-22	MAJOR SYSTEM-MINIMUM RIGHTS	JUN 1987
52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL)	JUN 1987
52.228-7	INSURANCE—LIABILITY TO THIRD PERSONS	MAR 1996
52.229-2	NORTH CAROLINA STATE AND LOCAL SALES TAX (APR 1984) – ALTERNATE I	APR 1984

## **Section I – Contract Clauses**

I-4

As of Amendment 7

<b>NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
52.229-3	FEDERAL, STATE, AND LOCAL TAXES	APR 2003
52.230-2	COST ACCOUNTING STANDARDS	APR 1998
52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING SERVICES	APR 1998
52.230-4	CONSISTENCY IN COST ACCOUNTING PRACTICES	AUG 1992
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	APR 2005
52.232-1	PAYMENTS	APR 1984
52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS	SEP 2002
52.232-8	DISCOUNTS FOR PROMPT PAYMENT	FEB 2002
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS	APR 1984
52.232-11	EXTRAS	APR 1984
52.232-17	INTEREST	JUN 1996
52.232-18	AVAILABILITY OF FUNDS	APR 1984
52.232-20	LIMITATION OF COST	APR 1984
52.232-22	LIMITATION OF FUNDS	APR 1984
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.232-25	PROMPT PAYMENT	OCT 2003
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION	OCT 2003
52.233-1	DISPUTES ALTERNATE I (DEC 1991)	JUL 2002
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.236-2	DIFFERING SITE CONDITIONS	APR 1984
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK	APR 1984
52.236-5	MATERIAL AND WORKMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984

**Section I – Contract Clauses**

I-5

As of Amendment 7

<b>NUMBER</b>	<b>TITLE</b>	<b>DATE</b>
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991
52.242-1	NOTICE OF INTENT TO DISALLOW COSTS	APR 1984
52.242-3	PENALTIES FOR UNALLOWABLE COSTS	MAY 2001
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS	JAN 1997
52.242-13	BANKRUPTCY	JUL 1995
52.243-1	CHANGES – FIXED PRICE	AUG 1987
52.243-2	CHANGES – COST REIMBURSABLE	AUG 1987
52.243-6	CHANGE ORDER ACCOUNTING	APR 1984
52.244-2	SUBCONTRACTS	JUN 2007
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	SEP 2006
52.245-1	GOVERNMENT PROPERTY (JUN 2007) ALT I	JUNE 2007
52.245-9	USE AND CHARGES	JUN 2007
52.246-23	LIMITATION OF LIABILITY	FEB 1997
52.246-24	LIMITATION OF LIABILITY – HIGH-VALUE ITEMS, Alternate I (Apr 1984)	FEB 1997
52.246-25	LIMITATION OF LIABILITY – SERVICES	FEB 1997
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS	JUN 2003
52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS	FEB 2006
52.248-1	VALUE ENGINEERING	FEB 2000
52.248-3	VALUE ENGINEERING – CONSTRUCTION	SEP 2006
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)	MAY 2004
52.249-4	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM)	APR 1984
52.249-6	TERMINATION (COST-REIMBURSEMENT) with ALTERNATE IV (SEPT 1996)	MAY 2004
52.249-8	DEFAULT (FIXED PRICE SUPPLY AND SERVICE)	APR 1984
52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)	APR 1984
52.249-14	EXCUSABLE DELAYS	APR 1984
52.251-1	GOVERNMENT SUPPLY SOURCES	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

**Section I – Contract Clauses**

I-6

As of Amendment 7

**HOMELAND SECURITY ACQUISITION REGULATION (48CFR  
CHAPTER 30)**

<http://www.dhs.gov/xopnbiz/regulations/>

<b><u>NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>(DATE)</u></b>
3052.204-71	CONTRACTOR EMPLOYEE ACCESS	JUN 2006
3052.204-70	SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES	JUN 2006
3052.211-70	INDEX FOR SPECIFICATIONS	DEC 2003
3052.219-70	SMALL BUSINESS SUBCONTRACTING PLAN REPORTING	JUN 2006
3052.222-70	STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK	DEC 2003
3052.222-90	LOCAL HIRE	JUN 2006
3052.223-90	ACCIDENT AND FIRE REPORTING	DEC 2003
3052.228-70	INSURANCE	DEC 2003
3052.242-71	DISSEMINATION OF CONTRACT INFORMATION	DEC 2003
3052.242-72	CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE	DEC 2003
3052.245-70	GOVERNMENT PROPERTY REPORTS	JUN 2006

**I.2 FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)**

This contract is subject to the written approval of the Head of the Contracting Activity (HCA) of the U.S. Coast Guard and shall not be binding until so approved.

**I.3 FAR 52.204-10 REPORTING SUBCONTRACT AWARDS (SEP 2007)**

(a) *Definition. Subcontract*, as used in this clause, means any contract as defined in FAR [Subpart 2.1](#) entered into by the Contractor to furnish supplies or services for performance of this contract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders, but does not include contracts that provide supplies or services benefiting two or more contracts.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282) requires establishment of a pilot program for a single searchable website, available to the public at no charge that includes information on Federal subcontracts.

**Section I – Contract Clauses**

(c) Within thirty days after the end of March, June, September, and December of each year through 2008, the Contractor shall report the following information at [www.esrs.gov](http://www.esrs.gov) for each subcontract award with a value greater than \$1 million made during that quarter. (The Contractor shall follow the instructions at [www.esrs.gov](http://www.esrs.gov) to report the data.)

- (1) Name of the subcontractor.
- (2) Amount of the award.
- (3) Date of award.
- (4) The applicable North American Industry Classification System code.
- (5) Funding agency or agencies.
- (6) Award title descriptive of the purpose of the action.
- (7) Contract number.
- (8) Subcontractor location including address.
- (9) Subcontract primary performance location including address.
- (10) Unique identifier for the subcontractor.

(End of clause)

#### **I.4 FAR 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

### **Section I – Contract Clauses**

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR [15.408\(k\)](#).

(End of clause)

#### **I.5 FAR 52.216-10 INCENTIVE FEE (MAR 1997) (APPLICABLE TO CLIN 0001)**

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) “Target cost,” as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) “Target fee,” as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years’ settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor’s past performance related to the submission and settlement of final indirect cost rate proposals.

### **Section I – Contract Clauses**

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.*

(1) The fee payable under this contract shall be the target fee increased by \_\_\_\_\_ [Contracting Officer insert Contractor's participation] cents for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_\_ [Contracting Officer insert Contractor's participation] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than \_\_\_\_\_ [Contracting Officer insert percentage] percent or less than \_\_\_\_\_ [Contracting Officer insert percentage] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of --

(i) Payments made under assignments; or

(ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of --

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the

## Section I – Contract Clauses

Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of Clause)

#### **I.6 FAR 52.217-6 OPTION FOR INCREASED QUANTITY (MAR 1989)**

The Government may increase the quantity of supplies called for in the Schedule B at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within the period of performance of the base and each option period. Delivery of the added items shall continue at the same rate as the like items called for under the contract unless the parties otherwise agree.

#### **I.7 FAR 52.217-7 OPTION FOR INCREASED QUANTITY – SEPARATELY PRICED LINE ITEM (MAR 1989)**

The Government may require the delivery of the number line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within the prescribed period of performance of the base and each option period. Delivery of added

### **Section I – Contract Clauses**

items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

#### **I.8 FAR 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed **6 months**. The Contracting Officer may exercise the option by written notice to the Contractor within **30 days of contract expiration date**.

(End of clause)

#### **I.9 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within **the dates specified within Table I.1 below**; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least **30 days before the contract expires**. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed **nine (9) years**.

**Table I.1 CLIN Date of Exercise**

For each grouping of CLINs, each CLIN within the group may be exercised separately, if at all.

<b>Contract Line Item Number (CLIN)</b>	<b>Latest Date of Exercise</b>
0001	Date of Contract Award
0002 - 0013	23 Months after Contract Award
1001 - 1009	23 Months after Contract Award

#### **Section I – Contract Clauses**

I-12

As of Amendment 7

Contract Line Item Number (CLIN)	Latest Date of Exercise
1010 - 1021	35 Months after Contract Award
2001 - 2009	35 Months after Contract Award
2010, 2018 - 2027	47 Months after Contract Award
3001 - 3009	47 Months after Contract Award
3010, 3024 - 3033	59 Months after Contract Award
4001 - 4009	59 Months after Contract Award
4010, 4030 - 4039	71 Months after Contract Award
5001 - 5009	71 Months after Contract Award
5010, 5036 - 5043	83 Months after Contract Award
6001 - 6009	83 Months after Contract Award
6010, 6041 - 6043	95 Months after Contract Award

(End of clause)

#### **I.10 FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)**

(a) The Contractor shall notify the Contracting Officer or designee, in writing, **45 days** prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

\* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR [23.601](#)(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior

#### **Section I – Contract Clauses**

I-13

As of Amendment 7

contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

#### **I.11 FAR 52.227-21 TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (DEC 2007)**

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) Technical data declaration.

(1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

#### **Section I – Contract Clauses**

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, \_\_\_\_\_, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. Such corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) Withholding of payment.

(1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer's opinion respecting any technical data that are subject to this clause, the Contractor fails to—

- (i) Make timely delivery of such technical data as required by this contract;
- (ii) Provide the declaration required by paragraph (b)(1) of this clause;
- (iii) Make the corrections required by paragraph (b)(2) of this clause; or
- (iv) Make revisions requested under paragraph (c) of this clause.

**Section I – Contract Clauses**

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in paragraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

#### **I.12 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)**

(a) *Definitions.* “Contracting Officer,” as used in this clause, does not include any representative of the Contracting Officer.

“Specifically Authorized Representative (SAR),” as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this paragraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within \_\_\_\_\_ **(to be negotiated)** calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

#### **Section I – Contract Clauses**

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

- (i) What contract line items have been or may be affected by the alleged change;
- (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
- (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
- (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within \_\_\_\_\_ **(to be negotiated)** calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

## Section I – Contract Clauses

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under paragraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

Note: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

## **Section I – Contract Clauses**

I-18

As of Amendment 7

(End of clause)

**I.13 FAR 52.246-19 WARRANTY OF SYSTEMS AND EQUIPMENT UNDER  
PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (MAY 2001)  
ALTERNATE III (APR 1984)**

(a) *Definitions.* As used in this clause—

“Acceptance” means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

“Defect” means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

“Supplies” means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean “data.”

(b) Contractor’s obligations.

(1) The Contractor’s warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor within:

- (i) the duration of any warranties for equipment or supplies provided to the Contractor by an Original Equipment Manufacturer or supplier that exceeds the warranty duration specified in paragraphs ii or iii, below:
- (ii) for the core system capability and the three IOC Sectors.
- (iii) 12 months after acceptance of the equipment ordered in support of establishing FOC.

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall—

- (i) Promptly correct the defect; or
- (ii) Promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

**Section I – Contract Clauses**

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within 14 days after discovery of the defect. Upon notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within 5 days a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, and the timeframe that any corrective action shall be undertaken. Unless otherwise provided by the Contracting Officer, Contractor repair of defects, inclusive of all necessary parts and supplies, shall be completed within 72 hours of notification. If the Contractor is unable to meet the required response time, the Contractor shall provide written notification to the Contracting Officer within 2 days requesting an extension of time. If the Contracting Officer approves the request a written approval will be provided with a new response deadline.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within 30 days to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services performed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The

#### **Section I – Contract Clauses**

warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this contract.

(c) Remedies available to the Government.

(1) The rights and remedies of the Government provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at the location identified by the Government.

**Section I – Contract Clauses**

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5)(i) The Contracting Officer shall give the Contractor a written notice specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause;

or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the

#### **Section I – Contract Clauses**

Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when offering the total final price. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustment made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the incentive Price Revision clause of this contract.

(End of clause)

#### **I.14 HSAR 3052.209-70 PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES (JUN 2006)**

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b))

#### **Section I – Contract Clauses**

of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain Stock Disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

## Section I – Contract Clauses

(i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan Deemed In Certain Cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain Transfers Disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special Rule for Related Partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) warrants;
- (ii) options;
- (iii) contracts to acquire stock;
- (iv) convertible debt instruments; and
- (v) others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:

## Section I – Contract Clauses

\_\_\_ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73;

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it has submitted a request for waiver pursuant to 3009.104-74, which has not been denied; or

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it plans to submit a request for waiver pursuant to 3009.104-74.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

(End of provision)

#### **I.15 HSAR 3052.215-70 KEY PERSONNEL OR FACILITIES (DEC 2003)**

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract are as follows:

Project Manager

Lead Systems Engineer

Lead Software Engineer

Lead Logistician

Environmental Manager

#### **Section I – Contract Clauses**

NAIS Project Resident Office

(End of clause)

**END OF SECTION I**